

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 7, 2004 Session

JAXIE RAYMOND JONES v. JOE C. CRUMLEY, JR.

**Appeal from the Chancery Court for Johnson County
No. 5326 G. Richard Johnson, Chancellor**

Filed September 20, 2004

No. E2003-01598-COA-R3-CV

Jaxie Raymond Jones (“the petitioner”), a state prisoner incarcerated at the Northeast Correctional Complex in Johnson County, filed a petition against Joe C. Crumley, Jr.,¹ District Attorney General for the First Judicial District of Tennessee (“the respondent”), seeking the contents of files in the respondent’s possession pertaining to “Washington County Criminal Court Case No. 14189.” The trial court ordered that the documents be produced pursuant to the provisions of Tenn. Code Ann. § 10-7-503(a)(1999).² Respondent appeals. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

Paul G. Summers, Attorney General and Reporter, and Richard H. Dunavant, Assitant Attorney General, Nashville, Tennessee, for the appellant, Joe C. Crumley, Jr.

Jaxie Raymond Jones, appellee, Mountain City, Tennessee, Pro Se.

OPINION

¹The Washington County Sheriff was also sued but that claim is not before us on this appeal.

²Tenn. Code Ann. § 10-7-503(a) provides as follows:

All state, county and municipal records and all records maintained by the Tennessee performing arts center management corporation, except any public documents authorized to be destroyed by the county public records commission in accordance with § 10-7-404, shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

I.

The trial court decreed that

said [r]espondent shall copy the requested records pursuant to *Tennessee Code Annotated § 10-7-503* and shall mail said material to the [p]etitioner as [sic] his place of incarceration only after the [p]etitioner pays said [r]espondent, in full and in advance, for the reasonable cost of copying and mailing the records the [p]etitioner now requests. The [r]espondent shall notify the [p]etitioner, within a reasonable time, of the anticipated reasonable costs of copying and mailing said records.

(Italics in original). The respondent presents the following lone issue, as taken verbatim from his brief, for our review:

Whether the Tennessee Public Records Act requires a District Attorney General not only to permit access to public records in his custody, but also to copy and deliver such records when requested by incarcerated persons.

II.

The issue now before us was addressed by us in an opinion authored by Judge Swiney in the case of **Waller v. Bryan**, 16 S.W.3d 770 (Tenn. Ct. App. 1999). In **Waller**, we opined as follows:

If the citizen requesting inspection and copying of the documents can sufficiently identify those documents so that Appellees know which documents to copy, a requirement that the citizen must appear in person to request a copy of those documents would place form over substance and not be consistent with the clear intent of the Legislature. The adoption of the Appellees' position would mean that any citizen who was unable to personally appear before the records custodian would be unable to obtain copies of the documents pursuant to the Public Records Act. This restriction would prohibit all Tennessee citizens who are unable, because of health reasons or other physical limitations, to appear before the records custodian from obtaining copies of public documents pursuant to the Public Records Act. Such a result is not consistent with the clear intent of the Legislature, and this Court will not interpret this statute in such a way as to prohibit those citizens, or those citizens incarcerated, from the rights provided by the Public Records Act. Appellees can fix a

charge or fee per copy so as to recover the actual cost of producing and delivering the copies. . . .

If a citizen can sufficiently identify the documents which he wishes to obtain copies of so as to enable the custodian of the records to know which documents are to be copied, the citizen's personal presence before the records custodian is not required. However, the records custodian is not required under the Public Records Act to make the inspection for the citizen requesting the documents. The citizen, to be able to obtain copies of those documents without making a personal inspection, must sufficiently identify those documents so that the records custodian can produce and copy those documents without the requirement of a search by the records custodian. The records custodian can require a charge or fee per copy that will cover both the costs of producing the copies and delivering the copies. It is the opinion of this Court that such was the intent of the Legislature.

Id. at 773-74. See also *Hickman v. Tenn. Bd. of Prob. & Parole*, C/A No. M2001-02346-COA-R3-CV, 2003 WL 724474, at *3 (Tenn. Ct. App. M.S., filed March 4, 2003). *Waller* is “controlling authority.” See Tenn. Sup. Ct. R. 4(H)(2) (“Opinions reported in the official reporter, however, shall be considered controlling authority for all purposes unless and until such opinion is reversed or modified by a court of competent jurisdiction.”).

The respondent asks us to revisit the holding in *Waller*. We decline to do so. In our judgment, the holding in *Waller* is a proper interpretation of the public policy of this state as expressed by the General Assembly in the Tennessee Public Records Act. To the extent the respondent makes public policy arguments, those arguments are more appropriately addressed to the legislative branch. Generally speaking, that branch – not the judicial branch – is responsible for the establishment of the public policy of this state. See *Crawford v. Buckner*, 839 S.W.2d 754, 759 (Tenn. 1992) (“Primarily, it is for the legislature to determine the public policy of the state . . .”).

III.

The judgment of the trial court is affirmed. Costs on appeal are taxed to the appellant, Joe C. Crumley, Jr. This case is remanded to the trial court for such further proceedings, if any, as may be required, consistent with this court's opinion, and for collection of costs assessed below, all pursuant to applicable law.

CHARLES D. SUSANO, JR., JUDGE